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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

No. 3:10-cv-00971-HU

Plaintiff,

v.

Defendant Fluke Corporation's
AMENDED MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM

SIERRA MEDIA, INC., a Washington
corporation, and **FLUKE CORPORATION**, a
Washington corporation,

Pursuant to Fed. R. Civ. P. 12(b)(6)
ORAL ARGUMENT REQUESTED

Defendants.

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FOR FAILURE TO STATE A CLAIM

LOCAL RULE 7.1 CERTIFICATION

Counsel for Defendant Fluke Corporation (“Fluke”) conferred in good faith with counsel for Plaintiff Flir Systems, Inc. (“Flir”) prior to the filing of this Motion. The parties were unable to resolve the issues raised in this motion.

MOTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Fluke respectfully moves to dismiss Counts Two, Three and Four of the First Amended Complaint (“FAC”) filed by Flir for failure to state claims upon which relief may be granted. First, Flir has not stated a claim for trade libel/commercial disparagement (Count Two) because it fails to allege that Fluke made a false statement against Flir and fails to specifically state special damages. Second, in the FAC, Flir does not properly allege facts in support of its intentional interference with prospective economic relations claim (Count Three) because there is no allegation that Fluke’s alleged interference disrupted an existing economic relationship between Flir and a third party and that Fluke knew of the relationship. Third, Flir has failed to state a claim for civil conspiracy (Count Four) because it has not pleaded with requisite particularity, has not adequately pleaded an underlying tort, and has failed to allege essential facts supporting the existence of a conspiratorial agreement to harm Flir. Accordingly, the Court should dismiss these claims.

This motion is supported by the file herein and the Memorandum in support filed on January 27, 2011.

DATED: January 28, 2011.

LANE POWELL PC

By /s/ Parna A. Mehrbani

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